Office-Supreme Court, U.S.
FILED
MAR 31 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

NO. 1032

MARY ETHEL FOX,
Appellant

versus

UNITED STATES OF AMERICA,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

SIDNEY W. PROVENSAL JR., of
CAHN & PROVENSAL
1014 Whitney Building
New Orleans, La. 70130
Attorneys for Appellant

INDEX

	Page
Jurisdictional Statement	1
Lower court opinion in United States of America v. State of Louisiana, et al, Civil Action No. 2548, Division "C", Eastern District of Louisiana, Baton Rouge Division	5
Supplementary order of the lower court in United States of America v. State of Louisiana, et al, In Re: Mary Ethel Fox, No. 2548, Eastern District of Louisiana, Baton Rouge Division, dated November 30, 1964	9
Supreme Court of the United States opinion in Louisiana, et al, appellants, v. United States, No. 67, October Term, 1964, dated March 8, 1965	11
Lower court opinion in United States of America v. Mary Ethel Fox, No. 11-625, Eastern District of Louisiana, New Orleans Division, dated November 2, 1962	21
The Fifth Circuit Court of Appeal opinion in United States of America, appellants, v. Mary Ethel Fox, No. 20,398, of the United States Fifth Circuit Court of Appeals, dated July 21, 1964	43

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No._____

MARY ETHEL FOX,

Appellant,

versus

UNITED STATES OF AMERICA,

Appellee.

JURISDICTIONAL STATEMENT

(a) The United States District Court for the Eastern District of Louisiana, Baton Rouge Division, Civil Action No. 2548, rendered an opinion of January 28, 1964, and this opinion has previously been before this Court in Louisiana, et al, appellants, v. United States, No. 67, October Term, 1964, and on March 8, 1965, Mr. Justice Black delivered the opinion of the Supreme Court in this matter. On November 30, 1964, the Three Judge United States District Court in the United States of America v. State of Louisiana, et al, In Re: Mary Ethel Fox, No. 2548, United States District Court for the Eastern District of Louisiana, New Orleans Division, rendered the preliminary order herein appealed.

(b) The Supreme Court of the United States has jurisdiction of this appeal by virtue of 28 U.S.C. §1253, which provides that any party may appeal to the Supreme Court from an order in any proceeding required by any Act of Congress to be held and determined by a District Court of three (3) judges. This appeal is from an order of a District Court of three (3) judges and the Supreme Court of the United States recognized jurisdiction in State of Louisiana v. United States of America, No. 67, October Term, 1964. This appeal is also sanctioned by the Civil Rights Acts of 1964, being Public Law 88-352, 88th Congress, H. R. 7152, July 2, 1964; 78 Stat. 241.

The date of the decree sought to be reviewed is November 30, 1964. The notice of appeal was filed January 5, 1965, and on March 4, 1965, a motion and order extending said time for docketing appeal until March 31, 1965, was filed.

(c) The following questions are presented by this appeal:

1. Whether or not Mary Ethel Fox is subject to the orders of the lower court not having been a party to the proceedings.

2. In the alternative, whether or not Mary Ethel Fox is required to comply with the orders of the lower court while complying with conflicting orders of another division of the lower court.

3. Whether or not the lower court has jurisdiction over Mary Ethel Fox.

4. Whether or not Mary Ethel Fox complied with the orders of the lower court.

(d) On November 30, 1964, Mary Ethel Fox was ordered to cease using the multiple choice test as a prerequi-

site to voter registration and was further ordered to file certain reports with the Court. On November 2, 1962, Mary Ethel Fox was ordered by the United States Federal District Court in proceedings entitled United States of America v. Mary Ethel Fox, No. 11-625, of the Eastern District of Louisiana, New Orleans Division, to submit written reports and to inform the Court of the results of the multiple choice test.

The order herein being appealed is from a lower court case in which Mary Ethel Fox was never a party. She was not served with the complaint or amended complaint and was notified of the case only after judgment had been rendered.

After having been served with the lower court judgment, Mary Ethel Fox was then ordered to show cause why she should not comply with the decree of the lower court, dated January 28, 1964, and further ordered to submit reports to the court.

(e) This appeal is not from a state court.

(f) The questions presented by this appeal are so substantial as to require plenary questions in that the court must make a determination, as to whether or not a registrar of voters who was not a party to a suit brought by the United States government should be bound by the judgment rendered in said suit. Another substantial question raised is what order of the Federal District Court should a registrar comply with when faced with two conflicting orders from different divisions of the same court.

(g) The lower court has abused its discretion in ordering Mary Ethel Fox to cease using the multiple test as a

prerequisite to voter registration, when she was administering said tests under the direct supervision and order of another section of the same Federal District Court. The lower court further abused its discretion by ordering Mary Ethel Fox to submit to a judgment in a proceeding to which Mary Ethel Fox was never a party.

(h) Attached hereto are the following opinions:

1. Lower court opinion in United States of America v. State of Louisiana, et al, Civil Action No. 2548, Division "C", Eastern District of Louisiana, Baton Rouge Division.

2. Supplementary order of the lower court in United States of America v. State of Louisiana, et al, In Re: Mary Ethel Fox, No. 2548, Eastern District of Louisiana, Baton Rouge Division, dated November 30, 1964.

3. Supreme Court of the United States opinion in Louisiana, et al, appellants, v. United States, No. 67, October Term, 1964, dated March 8, 1965.

4. Lower court opinion in United States of America v. Mary Ethel Fox, No. 11-625, Eastern District of Louisiana, New Orleans Division, dated November 2, 1962.

5. The Fifth Circuit Court of Appeal opinion in United States of America, appellants, v. Mary Ethel Fox, No. 20,398, of the United States Fifth Circuit Court of Appeals, dated July 21, 1964.

SIDNEY W. PROVENSAL, JR., of
Cahn and Provensal, Attorneys for
Mary Ethel Fox, Appellant.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

Civil Action No. 2548

UNITED STATES OF AMERICA, Plaintiff,

versus

STATE OF LOUISIANA, JIMMIE H. DAVIS, C. C. AYCOCK, J. THOMAS JEWEL, as members of the Board of Registration of the State of Louisiana, and HUGH E. CUTRER, JR., Director and Ex Officio Secretary of the Board of Registration of the State of Louisiana, Defendants.

Decree — January 28, 1964

Pursuant to the Findings of Fact, Conclusions of Law and Memorandum Opinion entered in this case:

It is Adjudged and Decreed that the provisions of Article 8, Section 1 of the Louisiana Constitution and the provisions of the statutes of Louisiana in so far as they provide for or relate to the requirement that electors must be able to understand or interpret any portion of the Constitution of the United States or the Constitution of the State of Louisiana are unconstitutional.

[fol. 107] It is Ordered that the defendants, including all parish registrars, their agents and successors are enjoined from enforcing or giving any further effect to the requirements of Article 8, Section 1 of the Louisiana Constitution and the statutes implementing Article 8, Section 1 in so far

as they pertain to the understanding or interpretation test as a prerequisite to registration to vote.

It is Ordered that in the following twenty-one parishes: Bienville, Claiborne, DeSoto, East Carroll, East Feliciana, Franklin, Jackson, LaSalle, Lincoln, Morehouse, Ouachita, Plaquemines, Rapides, Red River, Richland, St. Helena, Union, Webster, West Carroll, West Feliciana, and Winn, the defendants, their agents and successors, including the following registrars of voters

Parish	Registrar	Office Address
Bienville	Mrs. Pauline A. Culpepper	Arcadia, La.
Claiborne	Mrs. Louise Linton	Homer, La.
DeSoto	Sidney Wells Platt	Mansfield, La.
East Carroll	Cecil E. Manning	Lake Providence, La.
East Feliciana	Henry Earl Palmer	Clinton, La.
Franklin	Mrs. W. A. Hatton	Winnsboro, La.
Jackson	Mrs. Estelle Wilder	Jonesboro, La.
LaSalle	John S. Allen	Jena, La.
Lincoln	Mrs. Wanda C. Gibson	Ruston, La.
Morehouse	Margaret Larche	Bastrop, La.
Ouachita	Mae Lucky	Monroe, La.
Plaquemines	Mary Ethel Fox	Pointe-a-la-Hache, La.
Rapides	Cleighton L. Bushnell	Alexandria, La.
Red River	J. Walton Crawford	Coushatta, La.
Richland	Mrs. Lula C. Cheek	Rayville, La.
St. Helena	Quitman Crouch	Greensburg, La.
Union	Woodrow W. Farrar	Farmerville, La.
Webster	Mrs. Winnice P. Clement	Minden, La.
West Carroll	Mrs. Ora Cameron	Oak Grove, La.
West Feliciana	Fletcher Harvey	St. Francisville, La.
Winn	Charles H. Crain	Winnfield, La.

[fol. 108] are Enjoined from:

requiring, absent a general re-registration of all voters in the parish, any applicant for registration of voting age and possessed of the residence requirements as of August 3, 1962 to take the multiple-choice "citizenship" test as a prerequisite to registration to vote.

It is further Ordered that in the said twenty-one parishes the defendants, the registrars of voters in the said twenty-one parishes, their agents and successors, file with the Clerk of this Court on or before the 15th day of the second month and each succeeding month after the date of this decree a report covering registration during the preceding month, each of said reports to include the following:

(1) The name, address, age, race, and length of residence in the parish of each person who sought to apply for registration during the preceding reporting period;

(2) The action taken by each registrar with respect to each such applicant, that is, whether the applicant was accepted for registration or denied registration. The report shall include the certificate number of each accepted applicant and the specific reason or reasons for rejection of each rejected applicant;

[fol. 109] (3) The total number of persons, shown by race, registered to vote in the parish as of the end of the preceding month.

It is further Ordered that in the said twenty-one parishes, the defendants, the registrars of voters in the said twenty-one parishes, their agents and successors, make available to attorneys and agents of the United States, at any or all reasonable times, for inspection and photographing all documents, records and papers relating to the registration of voters and to voting.

This Court retains jurisdiction of this action for the purpose of entering such additional orders as justice may require, including orders of modification upon proof by the defendants that in one or more of the afore-said twenty-one parishes the discriminatory effects of the use of the interpretation test have ceased to exist; or upon proof by the Plaintiff that additional parishes not embraced in this decree have used the understanding or interpretation test to discriminate against Negroes.

The costs of this action are hereby taxed against the defendants.

Done this 28th day of January, 1964 CHB.

John Minor Wisdom, Circuit Judge, Herbert W. Christenberry, District Judge.

I respectfully DISSENT, for the reasons previously filed herein. I furthermore DISSENT from the order herein requiring the registrars to file monthly reports with the Clerk of Court on the ground that such an order is wholly unwarranted, unauthorized, and constitutes what I consider to be an unwarranted extra-judicial function being peformed by this Court. Baton Rouge, La., January 29, 1964.

E. Gordon West, District Judge.

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

CIVIL ACTION
NO. 2548

UNITED STATES OF AMERICA,
Plaintiff,

versus

STATE OF LOUISIANA, ET AL,
Defendents.

IN RE MARY ETHEL FOX,
Respondent.

SUPPLEMENTARY ORDER

This matter is before the Court on plaintiff's application for an order to secure compliance with the decree of this Court dated January 28, 1964. It appears that the respondent Mary Ethel Fox in her capacity as Registrar of Voters of Plaquemines Parish, Louisiana, has continued to use the multiple-choice tests as a prerequisite for voter registration in Plaquemines Parish in violation of that decree. It appears also that there exists no valid excuse for the respondent's use of the test contrary to this Court's decree. Now, therefore,

IT IS HEREBY ORDERED THAT Mary Ethel Fox, as Registrar of Voters of Plaquemines Parish, cease forthwith from using the *multiple-choice test as a prerequisite* to voter registration with respect to applicants who were of voting age and who possessed the residence requirements as of August 3, 1962.

It is further ORDERED that, within ten days from the date of this order, Mary Ethel Fox shall give to this Court written assurances through her attorneys that respondent Fox, now being fully apprised of her legal obligations, will no longer use the multiple-choice test in violation of this Court's decree.

It is further ORDERED that Mary Ethel Fox as Registrar of Voters of Plaquemines Parish henceforth submit reports to the Clerk of Court for inclusion in the file of this case in accordance with the provisions of this Court's decree of January 28, 1964.

The United States Marshal shall forthwith personally serve respondent, Mary Ethel Fox, with copies of this order.

Done this 30th day of November, 1964.

(s) John Minor Wisdom
(s) Herbert W. Christenberry
(s) E. Gordon West

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

NO. 67

LOUISIANA ET AL,

Appellants,

versus

UNITED STATES OF AMERICA,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA.

(March 8, 1965.)

MR. JUSTICE BLACK delivered the opinion of the Court.

Pursuant to authority granted in 42 U.S.C. § 1971 (c) (1958 ed., Supp. V), the Attorney General brought this action on behalf of the United States in the United States District Court for the Eastern District of Louisiana against the State of Louisiana, the three members of the State Board of Registration, and the Director-Secretary of the Board. The complaint charged that the defendants by following and enforcing unconstitutional state laws had been denying and unless restrained by the court would continue to deny Negro citizens of Louisiana the right to vote,

in violation of 42 U. S. C. § 1971 (a) (1958 ed.)[1] and the Fourteenth and Fifteenth Amendments to the United States Constitution. The case was tried and after submission of evidence,[2] the three-judge District Court, convened pursuant to 28 U. S. C. § 2281 (1958 ed.), gave judgment for the United States. 225 F. Supp. 353. The State and the other defendants appealed, and we noted probable jurisdiction. 377 U.S. 987.

The complaint alleged, and the District Court found, that beginning with the adoption of the Louisiana Constitution of 1898, when approximately 44% of all the registered voters in the State were Negroes, the State had put into effect a successful policy of denying Negro citizens the right to vote because of their race. The 1898 constitution adopted what was known as a "grandfather clause,"[3] which imposed burdensome requirements for registration thereafter but exempted from these future requirements any person who had been entitled to vote before January 1, 1867, or who was the son or grandson of such a person.[3] Such a transparent expedient for disfranchising Negroes, whose ancestors had been slaves until 1863 and not entitled to vote in Louisiana before 1867,[4] was held unconstitutional in 1915 as a violation of the Fifteenth Amendment, in a case involving a similar Okla-

[1] "All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority to the contrary notwithstanding." 16 Stat. 140, 42 U. S. C. § 1971 (a) (1958 ed.).

[2] The appellants did not present any evidence. By stipulation all the Government's evidence was presented in written form.

[3] La. Const. 1898, Art. 197, § 5. See generally Eaton, The Suffrage Clause in the New Constitution of Louisiana, 13 Harv. L. Rev. 279.

[4] The Louisiana Constitution of 1868 for the first time permitted Negroes to vote. La. Const. 1868, Art. 98.

homa constitutional provision. *Guinn v. United States*, 238 U. S. 347. Soon after that decision Louisiana, in 1921, adopted a new constitution replacing the repudiated "grandfather clause" with what the complaint calls an "interpretation test," which required that an applicant for registration be able to "give a reasonable interpretation" of any clause in the Louisiana Constitution or the Constitution of the United States.[5] From the adoption of the 1921 interpretation test until 1944, the District Court's opinion stated, the percentage of registered voters in Louisiana who were Negroes never exceeded one percent. Prior to 1944 Negro interest in voting in Louisiana had been slight, largely because the State's white primary law kept Negroes from voting in the Democratic Party primary election, the only election that mattered in the political climate of that State. In 1944, however, this Court invalidated the substantially identical white primary law of Texas,[6] and with the explicit statutory bar to their voting in the primary removed and because of a generally heightened political interest, Negroes in increasing numbers began to register in Louisiana. The white primary system had been so effective in barring Negroes from voting that the "interpretation test" as a disfranchising device had fallen into disuse. Many registrars continued to ignore it after 1944, and in the next dozen years the proportion of registered voters who were Negroes rose from two-tenths of one percent to approximately 15% by March 1956. This fact, coupled with this Court's 1954 invalidation of laws requiring school segregation,[7] prompted the State to try new devices to keep the white citizens in control. The Louisiana Legislature created a committee which became known as the "Segregation Committee" to seek means of accomplish-

[5] La. Const. 1921, Art. VIII, §§ 1 (c), 1 (d).
[6] *Smith* v. *Allwright*, 321 U. S. 483.
[7] *Brown* v. *Board of Education*, 347 U. S. 483.

ing this goal. The chairman of this committee also helped to organize a semiprivate group called the Association of Citizens Councils, which thereafter acted in close cooperation with the legislative committee to preserve white supremacy. The legislative committee and the Citizens Councils set up programs, which parish voting registrars were required to attend, to instruct the registrars on how to promote white political control. The committee and the Citizens Councils also began a wholesale challenging of Negro names already on the voting rolls, with the result that thousands of Negroes, but virtually no whites, were purged from the rolls of voters. Beginning in the middle 1950's registrars of at least 21 parishes began to apply the interpretation test. In 1960 the State Constitution was amended to require every applicant thereafter to "be able to understand" as well as "give a reasonable interpretation" of any section of the State or Federal Constitution "when read to him by the registrar."[8] The State Board of Registration in cooperation with the Segregation Committee issued orders that all parish registrars must strictly comply with the new provisions.

The interpretation test, the court found, vested in the voting registrars a virtually uncontrolled discretion as to who should vote and who should not. Under the State's statutes and constitutional provisions the registrars, without any objective standard to guide them, determine the manner in which the interpretation test is to be given, whether it is to be oral or written, the length and complexity of the sections of the State or Federal Constitutions to be understood and interpreted, and what interpretation

---

[8] La. Act 613 of 1960, amending La. Const., Art. 8, § 1 (d), implemented in La. Rev. Stat. §§ 18:35, 18:36. Under the 1921 constitution the requirement that an applicant be able "to understand" a section "read to him by the registrar" applied only to illiterates. La. Const., 1921, Art. 8, § 1 (d); compare *id.*, § 1 (c).

is to be considered correct. There was ample evidence to support the District Court's finding that registrars in the 21 parishes where the test was found to have been used had exercised their broad powers to deprive otherwise qualified Negro citizens of their right to vote; and that the existence of the test as a hurdle to voter qualification has in itself deterred and will continue to deter Negroes from attempting to register in Louisiana.

Because of the virtually unlimited discretion vested by the Louisiana laws in the registrars of voters, and because in the 21 parishes where the interpretation test was applied that discretion had been exercised to keep Negroes from voting because of their race, the District Court held the interpretation test invalid on its face and as applied, as a violation of the Fourteenth and Fifteenth Amendments to the United States Constitution and of 42 U.S.C. § 1971 (a).[6] The District Court enjoined future use of the test in the State, and with respect to the 21 parishes where the invalid interpretation test was found to have been applied, the District Court also enjoined use of a newly enacted "citizenship" test, which did not repeal the interpretation test and the validity of which was not challenged in this suit, unless a reregistration of all voters in those parishes is ordered, so that there would be no voters in those parishes who had not passed the same test.

I.

We have held this day in *United States v. Mississippi*, *ante*, p.—, that the Attorney General has power to bring suit against a State and its officials to protect the voting

[6] "Although the vote-abridging purpose and effect of the [interpretation] test render it *per se* invalid under the Fifteenth Amendment, it is also *per se* invalid under the Fourteenth Amendment. The vices cannot be cured by an injunction enjoining its unfair application." 225 F. Supp., at 391-392.

rights of Negroes guaranteed by 42 U. S. C. § 1971 (a) and the Fourteenth and Fifteenth Amendments.[10] There can be no doubt from the evidence in this case that the District Court was amply justified in finding that Louisiana's interpretation test, as written and as applied, was part of a successful plan to deprive Louisiana Negroes of their right to vote. This device for accomplishing unconstitutional discrimination has been little if any less successful than was the "grandfather clause" invalidated by this Court's decision in *Guinn v. United States*, *supra*, 50 years ago, which when that clause was adopted in 1898 had seemed to the leaders of Louisiana a much preferable way of assuring white political supremacy. The Governor of Louisiana stated in 1898 that he believed that the "grandfather clause" solved the problem of keeping Negroes from voting "in a much more upright and manly fashion"[11] than the method adopted previously by the States of Mississippi and South Carolina, which left the qualification of applicants to vote "largely to the arbitrary discretion of the officers administering the law."[12] A delegate to the 1898 Louisiana Constitutional Convention also criticized an interpretation test because the "arbitrary power, lodged with the registration officer, practically places his

---

[10] It is argued that the members of the State Board of Registration were not properly made defendants because they were "mere conduits," without authority to enforce state registration requirements. The Board has the power and duty to supervise administration of the interpretation test and prescribe rules and regulations for the registrars to follow in applying it. La. Rev. Stat. § 18:191A; La. Const., Art. 8, § 18. The Board also is by statute directed to fashion and administer the new "citizenship" test. La. Rev. Stat. § 18:191A; La. Const., Art. 8, § 18. And the Board has the power to remove any registrar from office "at will." La. Const., Art. 8, § 18. In these circumstances the Board members were properly made defendants. Compare *United States* v. *Mississippi*, ante, at 12-13.

There is also no merit in the argument that the registrars, who were not defendants in the suit, were indispensable parties. The registrars have no personal interest in the outcome of this case and are bound to follow the directions of the State Board of Registration.

[11] Louisiana Senate Journal, 1898, p. 33.

[12] *Ibid.*

decision beyond the pale of judicial review; and he can enfranchise or disfranchise voters at his own sweet will and pleasure without let or hindrance."[13]

But Louisianans of a later generation did place just such arbitrary power in the hands of election officers who have used it with phenomenal success to keep Negroes from voting in the State. The State admits that the statutes and provisions of the state constitution establishing the interpretation test "vest discretion in the registrars of voters to determine the qualifications of applicants for registration" while imposing "no definite and objective standards upon registrars of voters for the administration of the interpretation test." And the District Court found that "Louisiana . . . provides no effective method whereby arbitrary and capricious action by registrars of voters may be prevented or redressed."[14] The applicant facing a registrar in Louisiana thus has been compelled to leave his voting fate to that official's uncontrolled power to determine whether the applicant's understanding of the Federal or State Constitution is satisfactory. As the evidence showed, colored people, even some with the most advanced education and scholarship, were declared by voting registrars with less education to have an unsatisfactory understanding of the constitution of Louisiana or of the United States. This is not a test but a trap, sufficient to stop even the most brilliant man on his way to the voting booth. The cherished right of people in a country like ours to vote cannot be obliterated by the use of laws like this, which leave the voting fate of a citizen to the passing whim or impulse of an individual registrar. Many of our cases have pointed out the invalidity of laws so completely devoid of standards

---

[13] Kernan, The Constitutional Convention of 1898 and its Work, Proceedings of the Louisiana Bar Association for 1899, pp. 59-60.

[14] 225 F. Supp., at 384.

and restraints. See, e. g., *United States v. L. Cohen Grocery Co.*, 255 U. S. 81. Squarely in point is *Schnell v. Davis*, 336 U. S. 933, affirming 81 F. Supp. 872 (D. C. S. D. Ala.), in which we affirmed a district court judgment striking down as a violation of the Fourteenth and Fifteenth Amendments an Alabama constitutional provision restricting the right to vote in that State to persons who could "understand and explain any article of the Constitution of the United States" to the satisfaction of voting registrars. We likewise affirm here the District Court's holding that the provisions of the Louisiana Constitution and statutes which require voters to satisfy registrars of their ability to "understand and give a reasonable interpretation of any section" of the federal or Louisiana constitutions violate the Constitution. And we agree with the District Court that it specifically conflicts with the prohibitions against discrimination in voting because of race found, both in the Fifteenth Amendment and 42 U. S. C. § 1971 (a) to subject citizens to such an arbitrary power as Louisiana has given its registrars under these laws.

II.

This leaves for consideration the District Court's decree. We bear in mind that the court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future. Little if any objection is raised to the propriety of the injunction against further use of the interpretation test as it stood at the time this action was begun, and without further discussion we affirm that part of the decree.

Appellants' chief argument against the decree concerns the effect which should be given the new voter-qualifica-

tion test adopted by the Board of Registration in August 1962, pursuant to statute[15] and subsequent constitutional amendment[16] after this suit had been filed. The new test, says the State, is a uniform, objective, standardized "citizenship" test administered to all prospective voters alike. Under it, according to the State, an applicant is "required to indiscriminately draw one of ten cards. Each card has six multiple choice questions, four of which the applicant must answer correctly." Confining itself to the allegations of the complaint, the District Court did not pass upon the validity of the new test, but did take it into consideration in formulating the decree.[17] The court found that past discrimination against Negro applicants in the 21 parishes where the interpretation test had been applied had greatly reduced the proportion of potential Negro voters who were registered as compared with the proportion of whites. Most if not all of those white voters had been permitted to register on far less rigorous terms than colored applicants whose applications were rejected. Since the new "citizenship" test does not provide for a reregistration of voters already accepted by the registrars, it would affect only applicants not already registered and would not disturb the eligibility of the white voters who had been allowed to register while discriminatory practices kept Negroes from

---

[15]La. Act 62 of 1962, amending La. R. S. 18:191A.

[16]La. Act 539 of 1962, amending La. Const., Art. 8, § 18.

[17]Like the District Court, we express no opinion as to the constitutionality of the new "citizenship" test. Any question as to that point is specifically reserved. That test was never challenged in the complaint or any other pleading. The District Court said "we repeat that this decision does not touch upon the constitutionality of the citizenship test as a state qualification for voting." 225 F. Supp., at 397. The Solicitor General did not challenge the validity of the new test in this Court either in briefs or in oral argument, but instead recognized specifically that that issue was not before us in this case. And at oral argument in this Court the attorney for the United States stated that the Government has pending in a lower court a new suit challenging registration procedures in Louisiana "under the new regime," i. e., employed subsequent to the invalidation of the interpretation test in this case. The new "citizenship" test, he said, "is simply not an issue in this proceeding and was not invalidated in the lower court and we are not here challenging it."

doing so. In these 21 parishes, while the registration of white persons was increasing, the number of Negroes registered decreased from 25,361 to 10,351. Under these circumstances we think that the court was quite right to decree that, as to persons who met age and residence requirements during the years in which the interpretation test was used, use of the new "citizenship" test should be postponed in those 21 parishes where registrars used the old interpretation test until those parishes have ordered a complete reregistration of voters, so that the new test will apply alike to all or to none. Cf. *United States v. Duke*, 332 F. 2d 759, 769-770 (C. A. 5th Cir.).

It also was certainly an appropriate exercise of the District Court's discretion to order reports to be made every month concerning the registration of voters in these 21 parishes, in order that the court might be informed as to whether the old discriminatory practices really had been abandoned in good faith. The need to eradicate past evil effects and to prevent the continuation or repetition in the future of the discriminatory practices shown to be so deeply engrained in the laws, policies, and traditions of the State of Louisiana, completely justified the District Court in entering the decree it did and in retaining jurisdiction of the entire case to hear any evidence of discrimination in other parishes and to enter such orders as justice from time to time might require.

Affirmed.

MR. JUSTICE HARLAN considers that the constitutional conclusions reached in this opinion can properly be based only on the provisions of the Fifteenth Amendment. In all other respects, he fully subscribes to this opinion.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

NO. 11625
CIVIL ACTION
DIVISION D

UNITED STATES OF AMERICA

Plaintiff

versus.

MARY ETHEL FOX, Registrar of Voters,
Plaquemines Parish, Louisiana,
LIONEL L. LASSUS, Deputy Registrar of Voters,
Plaquemines Parish, Louisiana, and
STATE OF LOUISIANA

Defendants

Kathleen Ruddell, United States Attorney,
New Orleans, Louisiana
St. John Barrett, Attorney, Department
of Justice, Washington, D. C.
Richard K. Parsons, Attorney Department
of Justice, Washington, D. C.

Attorneys for the United States

Leander H. Perez
Sidney W. Provensal, Jr.

Attorneys for Defendants
Mary Ethel Fox and Lionel L. Lassus

Jack P. F. Gremillion, Attorney General,
State of Louisiana
M. E. Culligan, Jr., Assistant Attorney
General, State of Louisiana
John E. Jackson, Jr., Assistant Attorney
General, State of Louisiana
Henry J. Roberts, Jr., Assistant Attorney
General, State of Louisiana
Weldon A. Cousins, Assistant Attorney
General, State of Louisiana

Attorneys for State of Louisiana

AINSWORTH, District Judge:

This is a suit of the United States filed October 16, 1961, pursuant to the Civil Rights Acts of 1957 and 1960, 42 U.S.C.A. § 1971 et seq., brought by the Attorney General in accordance with the provisions of Section 1971(c) against the State of Louisiana (as provided in Section 601(b) of the Civil Rights Act of 1960), the Registrar of Voters, Mary Ethel Fox, and Deputy Registrar of Voters, Lionel L. Lassus, of Plaquemines Parish, Louisiana.

Plaintiff alleged that defendants, in conducting registration for voting in Plaquemines Parish, Louisiana, have engaged in racially discriminatory acts and practices against Negro citizens pursuant to a pattern and practice. It seeks a preliminary and permanent injunction against defendants, as well as immediate registration of all Negroes who have applied for registration since January 1953 and who possessed at the time of their applications the qualifications of the least qualified white person who

was registered. Discovery depositions were taken by the parties on February 26, 27 and 28, March 1 and April 2, 1962, of certain white and Negro citizens of Plaquemines Parish.

Thereafter, on April 13, 1962, the United States filed a motion "for a preliminary injunction enjoining, during the pendency of this case, the defendants, their agents, employees, successors, and all persons in active concert or participation with them, from engaging in any act or practice which involves or results in distinctions based on race or color in the registration or voting processes in Plaquemines Parish, Louisiana, and specifically order said defendants:

"1. To register as a voter any Negro applicant who possesses the following qualifications and none of the following disqualifications:

(a) That he is a citizen not less than twenty-one years of age;

(b) That he has been a resident of Louisiana for one year; of Plaquemines Parish for six months, and of the precinct in which he offers to register as a voter for three months next preceding any election;

(c) That he possesses the necessary qualifications regarding character and citizenship, as demonstrated by his willingness to take and sign the oath and affidavit prescribed by Louisiana law, and

(d) If the applicant did not meet the foregoing qualifications as of January 18, 1955, that he is also able to read and write as shown by his making written application in his own hand.

"2. To point out to each Negro applicant any answers, errors or omissions on his application form, which, if uncorrected or uncompleted, will disqualify him, and to permit him to correct or complete the form.

"3. To cease requiring any Negro applicant to take or pass the so-called 'constitutional interpretation test' as a prerequisite to qualifying as a voter.

"4. To cease using the application form as an examination or test for Negro applicants, and to use such application only as an information sheet for obtaining data relating to the Negro applicant's qualifications, as such form has been and is being used in registering white applicants.

"5. To place on the current registration rolls of Plaquemines Parish and all official copies thereof, the names of the following Negro citizens of Plaquemines Parish: (Here are listed 41 names.)

"6. To file monthly reports with the Clerk of Court reflecting the name, address, and race of each applicant for registration, the disposition of his application, and, if rejected, the reason therefor."

No finding of unconstitutionality of any Louisiana constitutional or statutory provision is sought by plaintiff.

Pre-trial conference was held in chambers on April 27, 1962, and the motion for a preliminary injunction was heard by the court without a jury on May 1, 2 and 3, 1962, at which time the court received in evidence on the offer of the United States all of the voting records, application forms and test forms of the defendant Registrar, all of the discovery depositions heretofore taken by the parties, and numerous other exhibits. A number of witnesses testified orally for both sides and defendant Registrar submitted in evidence a number of exihibits.

Briefs were submitted by all parties, proposed Findings of fact and Conclusions of Law were submitted by the United States on July 16, 1962, and reply of defendant Registrar on July 23, 1962. We permitted the filing on September 20, 1962, of additional evidence in affidavit form by defendant Registrar, relating to a new system of registration inaugurated by the Registrar on September 10, 1962. The matter is now before us for decision on the motion for a preliminary injunction.

Plaquemines Parish is one of the smallest in population in Louisiana, the 1960 census having recorded 14,239 people. It has no urban population and 82.4% are classified as rural non-farm citizens and 17.6% as rural farm citizens. The non-white population is 38.7%. The parish is one of the richest in natural resources in the state. It is geographically situated below and south of New Orleans, on both sides of the Mississippi River, extending to the Gulf of Mexico. On November 17, 1954, the governing body of Plaquemines acting under authority of the applicable Louisiana statute[1] adopted permanent registration which meant that all persons then on the registration rolls and all those permanently registered would remain on the rolls permanently unless they were stricken therefrom as provided by law because of nonvoting in any election within a consecutive two-year period. On December 9, 1954, the first constitutional interpretation test of the Louisiana Constitution was given to an applicant as a condition of registration. On January 18, 1955, the governing body of the parish adopted a resolution requiring the Registrar strictly to enforce the standards of registration, including the giving of a constitutional interpretation test to all applicants for registration.

[1]La. R.S. 18:231-261.

The present Registrar, Miss Fox, has served in that office from July 1958 to date; her Deputy Lassus has served from November 1958 to date. The Registrar's predecessor in office, Giordano, served in that office from 1945 until Miss Fox took over the duties of the office, though he was actually dismissed from the office on September 1, 1956, by the State Board of Registrars. He served, however, until his successor, the present Registrar, Miss Fox, was qualfied in July 1958. The Registrar and her Deputy are the only employees of the office which is situated in the Courthouse at the Parish seat at Pointe a la Hache. Several years ago in order to accommodate the public several substations at strategic places in the parish were opened at which time additional help was secured to assist in registration of large numbers of persons. This practice has been discontinued and registration occurs only in the office at the Courthouse at the parish seat.

Registration in Louisiana is a necessary prerequisite to voting in any election. The qualifications of electors and method of registration are set forth in the Louisiana Constitution and Statutes. La. Const. Art. 8 § 1, La. R.S. 18:31-42. In addition to the usual qualifications, such as being of the age of majority, citizenship and residency, certain standards of good character and literacy must also be met. To establish an applicant's literacy, Louisiana Constitution Article 8, Section 1(c), requires that he shall be able to read and write in the English language or his mother tongue and shall demonstrate his ability to do so when he applies for registration by reading and writing from dictation by the Registrar any portion of the preamble of the United States Constitution; also, that he must make written application which shall contain certain

essential facts to show that he is entitled to register to vote and the application shall be entirely written, dated and signed by him "in the presence of the registration officer or his deputy, without assistance or supervision from any person or any memorandum whatever, other than the form of application." Section 1(d) of the constitutional provision referred to requires that the person shall be of good character and reputation and shall be able to understand and give a reasonable interpretation of any section of either the Constitutions of the United States or the State of Louisiana when read to him by the Registrar. The applicant must demonstrate that he is well disposed to the good order and happiness of the state by executing an affidavit that he will faithfully and fully abide by all the laws of Louisiana.

The Louisiana Legislature at its 1962 Regular Session passed Acts 62 and 63 which installed a new system of uniform procedures for the registration of voters in all parishes of the state, said by resolution of the State Board of Registration "to insure a system of non-discriminatory registration of voters with the view of affording all qualified voters the same opportunity for successful registration." The so-called objective "Citizenship Test of Our Constitution and Government" propounds to applicants six questions each with three optional answers set forth in the test card. There are ten such cards which are displayed to applicant face down for applicant to select one for his test. Applicant must circle the applicable answer and is required to answer four questions correctly. He must also execute, as formerly, the application form, the affidavit that he will faithfully abide by Louisiana's laws, and must be able to read and write, from dictation, the preamble to the United States Constitution.

The constitutional interpretation test as a prerequisite for registration has thus been discarded.

The United States census report of 1960 showed that the population of Plaquemines Parish, of persons over 21 years of age, consisted of 8,633 white and 2,897 non-white. The registered voters of that parish as of March 12, 1962, consisted of 6,906 white and 43 Negro persons. Of this total, about half were enrolled by taking a constitutional interpretation test and the other half were registered under the old procedure whereby completion of the application form alone was sufficient. The latter were frozen in when permanent registration was adopted by the parish.

The law is clear that "The States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised * * * absent of course the discrimination which the Constitution condemns." *Lassiter v. Northampton County Bd. of Elections*, 360 U.S. 45, 50, 79 S.Ct. 985 (1954).

In *Guinn v. United States*, 238 U.S. 347, 35 S.Ct. 926, 931 (1915), the Supreme Court upheld the right of the states to apply a literacy test to all voters irrespective of race and color, saying; "No time need be spent on the question of the validity of the literacy test, considered alone, since, as we have seen, its establishment was but the exercise by the state of a lawful power vested in it, not subject to our supervision, and, indeed, its validity is admitted."

It is equally well established that a Registrar has a legal duty to conduct voter registration in a fair and reasonable manner without distinction or discrimination because of race or color and a Registrar may not use pro-

cedures and practices which deny or abridge the right of any citizen to vote on account of his race or color. Fourteenth and Fifteenth Amendments, U. S. Const.; Civil Rights Acts of 1957 and 1960, 42 U.S.C.A. § 1971 et seq.; *United States v. Raines*, 362 U.S. 17 (1960); *United States v. Thomas*, 362 U.S. 58 (1960); *United States v. State of Alabama*, 192 F.Supp. 677 (1961); *State of Alabama v. United States*, 5 Cir., 1962, 304 F.2d 583. Unlike the facts in *State of Alabama*, supra, the defendants here deny that there has been discrimination because of race or color in the registration procedures of their office.

At the outset defendants objected to the admissibility in evidence of the discovery depositions of numerous witnesses, citizens of the parish, on the ground that it was not shown as provided by Rule 26(d) of the Federal Rules of Civil Procedure that the witnesses resided more than 100 miles distant from a courthouse; that the depositions were taken for discovery purposes only and not for use at the trial hereof. We reject this contention because in a proceeding for preliminary injunction oral testimony, although permissible, is not absolutely required. The court may receive and consider both affidavits and other documents which are the equivalent of affidavits. The depositions were taken under oath and we hold that they are at least as good as affidavits on the hearing for a motion for preliminary injunction.[2] Objection was also made to certain statistical summaries prepared by plaintiff's counsel and submitted to the court for consideration, but these summaries were not received in evidence and are merely written statements by counsel for the plaintiff of what they contend the evidence shows. These statistics have

[2] *Group* v. *Finletter*, 108 F.Supp. 327 (D.C., D.C., 1952); *Hoffritz* v. *United States*, 240 F.2d 109 (C.A. 9, 1956); *Western Air Lines* v. *Flight Engineers Internat'l Ass'n., AFL-CIO*, 194 F.Supp. 908 (S.D. Cal., 1961).

therefore not been received as evidence by the court and will be considered merely as argument of counsel. They represent tabulations of counsel of portions of the voluminous records of the Registrar's office. There is no reason why they should not be considered, unless it is clearly indicated that is an error in the tabulation.

Evidence was also admitted concerning the practices of the Registrar's office prior to July 1958 when the present defendant, Miss Fox, took over the duties of the office, the Registrar objecting, however, that she is not responsible for any acts of omission or commission by her predecessor in office, Mr. Giordano, who served from 1945 until she assumed her duties. The short answer to this contention, however, is found in the Fifth Circuit's recent decision in *Kennedy v. Lynd*, decided July 11, 1962, citing its holding in *State of Alabama v. United States*, 5 Cir., 1962, 304 F.2d 583, in which the court held that evidence of claimed discrimination may go back many, many years. The defendant Registrar also objects to any consideration by the court that the 41 named Negro citizens in the motion of the United States for preliminary injunction should immediately be registered by a mandatory injunction. The Registrar contends that the Civil Rights Act, Section 1971(c), authorizes a proper proceeding for preventive relief only and that immediate registration of the 41 Negro citizens is unauthorized under the Act itself. This question has likewise been disposed of in *State of Alabama v. United States*, 5 Cir., 1962, 304 F.2d 583, in which the court held that Congress expressly stated that relief available included injunctions "or other order," and that mandatory injunctions affirmatively compelling the doing of some act are a traditional tool of equity. In light of the evidence in the record the order of the District Judge in

that matter that 54 Negroes be registered was held to be eminently proper. *The question therefore is whether or not this record will justify an order of immediate registration of the 41 Negro citizens.*

The court has carefully and painstakingly considered the evidence in connection with the application and test forms of the 41 Negro citizens to determine whether or not on their face any discrimination existed against these Negro applicants which would justify an order compelling the Registrar to place them on the rolls immediately. We found that of the 41 citizens, 4 are now registered to vote.[3] Of the 37 remaining applicants, 16 did not fill out the application form or attempt to answer the constitutional test.[4] An examination of these cards which are in evidence discloses that virtually all of these 16 persons wrote nothing but their names at the bottom of each of the application and test card forms. For example, Angeline Jones and Earlie Pansy wrote on their test cards, "I can't answer." Roosevelt Pansy wrote, "No, answer." Josephine B. Rodgers wrote, "I can not answer these questions." Mary Theresa Taylor wrote, "I don't know." The others wrote nothing but their names. Thirteen of the Negro applicants filled out their application cards but made no attempt to answer the constitutional test.[5] For example, Carolyn Sapp wrote on her two cards, "Can't answer." and "I cannot fill this out." Eugene Sapp wrote,

---

[3]Godfrey Cosse, Jr., Norma Johnson Cosse, Isabel B. Hardy, Vincent Paul Williams.

[4]Andrew Boyd Franklin, Archie George Franklin, Lavinia Franklin, Alfred Griffin, Jr., Henry Hughes, Angeline Jones, Richard N. Jones, Earlie Pansy, Roosevelt Pansy, Josephine B. Rodgers, Margarite Rodgers, Elsie Taylor, Taspel Taylor, Leo Taylor, Mary Theresa Taylor and Victoria Treme.

[5]Sarah Brown, Lambert A. Duncan, Genella Johnson, Alvin Jones, Gertrude Jones, Carolyn Sapp, Eugene Sapp, Wilfred A. Smith, Elizabeth Louise Taylor, John Taylor, Thelma Taylor, Vivian Taylor and Yvonne Taylor.

"can't answer" Alvin Jones said, "I don't know." John Taylor said, "Don't know." Thelma Taylor said, "I don't know." Vivian Taylor said, "I don't understand it." Of the remaining 8 Negro applicants, 4 failed to fill out their application forms correctly, having numerous errors and also failed the constitutional test; the other 4 satisfactorily filled out the application form but failed the constitutional test.

Under the circumstances, all of the 37 Negro citizens who remain unregistered of the 41 sought to be registered by the motion of plaintiff *have clearly failed to comply with Louisiana law in connection with their applications and test cards*, and it would therefore be improper and an abuse of our discretion to order their immediate registration. However, we will order that the Registrar forthwith provide each of them with another opportunity to register since the conditions for registration have now changed.

Among other things, plaintiff has requested that the court make a finding under the provisions of 42 U.S.C.A. § 1971(e) that the alleged deprivation of voting rights was because of race or color and was or is pursuant to a pattern or practice of discrimination. It is contended by the plaintiff that white persons are assisted in the filling out of their application and test forms whereas Negro citizens are denied assistance. The defendants strenuously deny the allegation and the evidence is in sharp conflict.

The evidence shows that at least since 1954 the Registrar has had an office at the parish seat of Plaquemines Parish at Pointe a la Hache in the Courthouse on the second floor clearly marked as the Registrar of Voters'

office. Office hours are from 9:00 a.m. to 5:00 p.m., Mondays, Tuesdays and Saturdays; applicants are taken into the office one at a time in the order of their arrival. There is no waiting list. Every applicant is required to complete application and constitutional test card forms. If the applicant passes the examination, he must sign the poll book and his registration certificate is mailed to him. If an applicant fails, he is so advised and may apply again on a subsequent day. *There is no coercion against any person because of race, all may apply and all are treated with courtesy.* There is likewise no evidence that Negroes have been discouraged from applying for registration. There is no delay in notifying the applicant whether or not he passes and there are no separate facilities for persons because of race, all applying to and being given the test in the same room, though one by one.

During the last seven years, at least since January 18, 1955, as far as we can determine, there has been a grand total of 64 Negro applications rejected. Many of these rejected applied more than one time so that the total number of Negroes involved constitutes about 51 persons. Of these, 10 are now registered. Accordingly, there has been only an average of less than 8 Negroes per year rejected for registration. During this period of time approximately 49 Negroes have been registered. It is apparent that there has been no strong movement on the part of the Negro citizenry of the parish to become registered to vote since 1955. There remains a net total of 37 of those rejected whom it is sought to be registered immediately pursuant to the motion for preliminary injunction. The greatest barrier to their registration and the obstacle which undoubtedly discouraged many of them was the requirement beginning in December 1954 of the con-

stitutional interpretation test as a condition of registration. This test has now been discarded by the Registrar by her action on September 10, 1962, pursuant to the action of the 1962 Louisiana Legislature and the resolution of the Louisiana Board of Registration promulgating the new system for applicants throughout the State of Louisiana.[6] This action undoubtedly removes the biggest obstacle which the Negro citizen has faced in his efforts to exercise his constitutional right as a citizen of the United States to register to vote in elections held in Plaquemines Parish.

Much greater and more sufficient evidence is necessary, however, in our opinion to justify a finding of a pattern or practice of discrimination and the evidence is insufficient here to permit such a holding. Where only 51 Negroes have been denied registration over a seven-year period by the Registrar and her predecessor, and but 37 remain of those rejected still seeking immediate registration under orders of this court, it would be an unwise exercise of our authority to hold that the facts here warrant the sweeping and broad holding sought here by plaintiff.

Nevertheless, there is sufficient evidence to justify our enjoining defendants by preliminary injunction from discriminating against any citizens of Plaquemines Parish by reason of race or color in the administration of the registration procedures in the Registrar's office. *The evidence abundantly shows that some of the white registrants now on the rolls received help in the filling out of their application forms and constitutional test cards.* It

---

[6]See Registrar's affidavit to this effect with accompanying exhibits, filed in this court on September 20, 1962.

is true that either the Registrar or her Deputy also helped *in the registration of some of the Negro applicants, namely, Junius Tate, Reverend Henry Hardy, Norma Cosse, Mary Alice Harvey and August Tinson,* all of whom are now registered to vote. The similarity of answers on the constitutional test form cards, especially those shown in the display furnished the court by plaintiff's counsel for the period October 4-7, 1960, shows conclusively that all of the 55 applicants in the display were either assisted in taking the test or provided with the written answers for them to copy. It is equally true that several other white witnesses were assisted in their registration.[7] Defendant Registrar contradicts this evidence with white witnesses who testified that they were registered without assistance by the Registrar or her Deputy. Though the evidence is in conflict, we have no doubt that a number of white registrants were aided in completing the application forms and taking the constitutional test. Under the prior regime of Giordano, as Registrar, and particularly prior to 1954, the then Registrar maintained no regular office or hours for registration of applicants. The handwriting expert of plaintiff identified a number of application forms of registrants filled out during that period which were in the handwriting of one person indicating that even the application forms in the times eight or more years ago were in some instances filled out by someone other than the applicant. *But the Giordano excesses have long since ceased to exist and have not existed under the defendant Registrar, Miss Fox.* She has always maintained an office with regular office hours. With the exception of the irregularities under Deputy Registrar Hingle who was employed

---

[7]See testimony of Robert Norred, Amanda Mackey, Anthony P. Arnona, Charles Albert Gieseler, Herbert J. Crochet, Annie E. Buras, Catherine Ruth Buras, Henry C. Wall, James Albert Bauman and Lillie Mae Bauman.

only two months and who undoubtedly helped to fill out application forms for white registrants, the forms are now and have been for many years filled out by the applicants themselves, both white and Negro.

The Registrar, Miss Fox, in her written briefs and response to plaintiff's proposed decree, states that the new objective citizenship test which now has supplanted the difficult constitutional interpretation test "will be administered without discrimination" and that she "will perform the duties imposed upon her in a conscientious and non-discriminatory manner." She maintains that her office procedures have been improved and states that "changes have been made" and that "defendants in instant case have evidenced a willingness and desire to do the right thing at all times in accordance with Louisiana law"; that "considerable changes have been made to insure fair treatment of all"; "there has been tremendous improvement and undoubtedly there will be further improvement to insure that all are treated equally and fairly, improvements to guarantee that none can ever complain."

The evidence of the witness Lambert now indicates that at least since *1961 constitutional test forms were evenly distributed* where in the past white applicants were apparently given the easier forms to answer, particularly Forms 2 and 8. Of course, the constitutional interpretation test in Plaquemines Parish is now moot, and future applicants will no longer have to contend with it.

Pending this suit we find it necessary to grant the motion for a preliminary injunction to insure that defendants will not engage in any act or practice which involves or results in distinctions based on race or *color*

in the registration or voting processes in Plaquemines Parish, Louisiana. However, we are not justified under the evidence or the law in ordering, as requested by plaintiff, the registration of all Negro citizens of Plaquemines Parish over the age of 21 who have the necessary qualifications and none of the disqualifications for a person to register, without requiring that applicants present themselves for consideration and compliance with the applicable Louisiana registration laws. *This means that the application form must be correctly filled out without assistance.* It is not an information form only — *it is a literacy test — and it is simple enough for even the unsophisticated citizen to complete if he can read and write.* Likewise, the citizenship test now required by the new Louisiana statute is a much more reasonable test than the former constitutional interpretation test *which the Negro citizens failed.* The biggest barrier to successful registration by Negro applicants, the constitutional interpretation test, has now been removed and under the preliminary injunction which we are issuing the defendants are enjoyed against discrimination because of race or color in the registration processes in Plaquemines Parish. All of the remaining *37* named Negro citizens heretofore rejected shall be notified by the Registrar within fifteen days of this decree that they may again present themselves for registration in accordance with this mandate. This is therefore substantial relief to plaintiff and should be sufficient under the circumstances to guarantee to all persons in Plaquemines Parish, regardless of race or color, a full opportunity to register and vote without discrimination. Our action here is carefully designed to provide to Negro citizens of Plaquemines the greatest protection and safeguard of their right to register and vote, while maintaining as far as is consistent with the

requirements of the Fifteenth and Fourteenth Amendments, the delicate balance between state and federal relations. Registration is a state function; it can best be carried out by the proper state official. A decent respect for the rights of all citizens, white and Negro, is necessary, however. It must be maintained. Our injunction will insure it. The Registrar's protestations that she is now acting in good faith and will continue to do so under the new registration procedures will be tested. There is a ray of hope that conditions will improve. If good faith registration is now provided, the remedy we have granted can subsequently be removed.

In order to insure proper compliance with our order the defendants are directed to file monthly reports with the Clerk of this court reflecting the name, address and race of each applicant for registration, the disposition of his application and, if rejected, the reason therefor.

After a satisfactory trial period, if defendants feel that this requirement is burdensome and the injunction is then unnecessary, they may make a proper showing to the court on the hearing of the merits of this suit that the conduct of their office since the handing down of this injunction has been without discrimination to applicants because of race or color, and the court will then determine the matter on the basis of the evidence.

The State of Louisiana, defendant herein, attacks the constitutionality of Section 601(b) of the Civil Rights Act of 1960 (now contained in the last sentence of 42 U.S.C.A. § 1971(c)) which authorizes suit against the state as a party defendant if there has been any deprivation of a right or privilege under this section by any official of a

state or subdivision thereof. The United States Supreme Court in *United States v. Raines*, 362 U.S. 17 (1960), held that the Act was not unconstitutional. The Court also said in said case (p. 25), ". . . it is enough to say that the conduct charged — discrimination by state officials, within the course of their official duties, against the voting rights of United States citizens, on grounds of race or color — is certainly, as 'state action' and the clearest form of it, subject to the ban of that Amendment, and that legislation designed to deal with such discrimination is 'appropriate legislation' under it. It makes no difference that the discrimination in question, if state action, is also violative of state law." The Court further said, "We think this Court has already made it clear that it follows from this that Congress has the power to provide for the correction of the constitutional violations of every such official without regard to the presence of other authority in the State that might possibly revise their actions." On another issue the constitutionality of this section having been assailed by the State of Louisiana was declared constitutional in *United States v. Manning*, W.D. La., 1962, 206 F.Supp. 623. See also *State of Alabama v. United States*, supra. The plea of unconstitutionality is therefore rejected.

DECREE

Pursuant to the Findings of Fact and Conclusions of Law contained in the opinion of the court entered this day,

IT IS THE ORDER, JUDGMENT AND DECREE OF THIS COURT that the State of Louisiana, Mary Ethel Fox, Registrar of Voters of Plaquemines Parish, Louisiana, and Louis L. Lassus, Deputy Registrar of Voters,

their deputies, agents, officers, employees, successors, and all persons in active concert or participation with them, be and each is hereby enjoined by preliminary injunction, from and after this decree, during the pendency of this case, from:

1. Engaging in any act or practice which involves or results in distinctions based on race or color in the registration or voting processes in Plaquemines Parish, Louisiana.

2. Assisting applicants in completing the filling out of their application and/or test forms without giving the same aid and assistance to Negro applicants.

3. Grading or rating the application and test cards of Negro applicants in any way different from that of other applicants who may apply for registration, having due regard for the requirements Louisiana constitutional and statutory provisions relating to voter registration.

4. Failing to apply equal standards to all applicants, including Negro applicants, in processing and judging who has passed or failed to pass the tests leading to registration.

5. Administering the qualification tests to Negroes in Plaquemines Parish, Louisiana, in any way different from the manner in which those tests are administered to other applicants for registration.

6. Denying to any Negro citizen of Plaquemines Parish, Louisiana, for reasons of race or color, any of his rights under the laws of the State of Louisiana or the United States pertaining to his right to register to vote in said parish.

7. Failing to accord any Negro citizen of Plaquemines Parish, Louisiana, in a fair, impartial and nondiscriminatory manner, each and every right such citizen has or may have under the registration laws of the State of Louisiana and the lawful resolutions and regulations of the Louisiana Board of Registration.

IT IS FURTHER ORDERED that each of the named Negro citizens in plaintiff's motion for preliminary injunction not now registered to vote, be notified by the Registrar of Voters not later than fifteen days from date of service of this decree on defendants, that they may present themselves as applicants for registration for processing and judging of their tests in conformity with this decree.

IT IS FURTHER ORDERED that defendants *file monthly reports* with the Clerk of this court reflecting the name, address, and race of each applicant for registration, the disposition of his application and, if rejected, the reason therefor.

IT IS THE FURTHER ORDER, JUDGMENT AND DECREE OF THIS COURT that the defendants shall until further order of this court make the voter registration books and records of Plaquemines Parish, Louisiana, available for inspection and copying by the plaintiff at any and all reasonable times at the office of the Registrar of Voters of Plaquemines Parish.

This court retains jurisdiction of this cause for the purpose of issuing any and all additional orders herein that may, in its judgment, become necessary or approp-

riate for the purpose of modifying and/or enforcing this decree.

IT IS ORDERED that the costs incurred in this proceeding be and they are hereby taxed against the defendants, for which execution may issue.

Done, this the 2d day of November, 1962, at New Orleans, Louisiana.

Robert A. Ainsworth, Jr.
UNITED STATES DISTRICT JUDGE

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 20398

UNITED STATES OF AMERICA,
Appellant,

versus

MARY ETHEL FOX, REGISTRAR OF VOTERS, PLAQUEMINES PARISH, LOUISIANA, ET AL,
Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana.

(July 21, 1964)

Before RIVES and JONES, Circuit Judges, and BOOTLE, District Judge.

JONES, Circuit Judge: The United States, alleging that Negro citizens of Plaquemines Parish, Louisiana, were being deprived of voting rights secured by Federal statute,[1] brought an action against Mary Ethel Fox, the Registrar of Voters, Lionel L. Lassus, the Deputy Registrar of Voters of Plaquemines Parish, and against the

[1]All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding. 42 U.S.C.A. § 1971 (a).

State of Louisiana, pursuant to congressional authorization,[2] seeking injunctive relief from discrimination against Negroes in voter registrations in Plaquemines Parish, Louisiana.

In the complaint, filed on October 16, 1961, it was alleged that since January 1953, Negroes had been subjected to discrimination by (a) applying different and more stringent procedures and standards in administering the requirement of the Louisiana Constitution and statutes that applicants give a reasonable interpretation of any section of the Constitution of the United States or the State of Louisiana; (b) rejecting Negro applicants for errors or omissions in completing their applications while assisting white applicants in filling out their forms; and (c) refusing to register qualified Negroes. There was a specific averment that discrimination against Negroes had deprived them of their rights to vote, and such deprivation had been pursuant to a plan and practice. The prayer of the complaint sought a finding that the acts and practices as alleged constituted deprivations of rights secured by 42 U.S.C.A. 1971(a), Note 1, *supra*, and a finding that such deprivations were pursuant to a pattern and practice. The court was asked to issue a preliminary and permanent injunction against the doing of any act which would deprive any citizen in Plaquemines Parish of the right to register and vote without distinctions based upon race or color, from engag-

[2]Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. In any proceeding hereunder the United States shall be liable for costs the same as a private person. 42 U.S.C.A. § 1971(c).

ing in any act which would delay, prevent, hinder or discourage Negro citizens in Plaquemines Parish, on account of their race or color, from applying for registration and becoming registered voters, and from applying different and more stringent procedures and standards to Negro applicants than to white applicants. The application of the "freezing" doctrine, so called, was sought by a specific prayer for an order requiring the registration of all Negroes who had applied for registration since January 1953, and who possessed at the time of their applications the qualifications of the least qualified white person who had applied for and had been registered since that time. Answers were filed denying discrimination against Negroes in the administration of the voter registration laws in Plaquemines Parish.

On April 13, 1962, the United States filed a motion for a preliminary injunction and for the finding of a pattern or practice. The motion sought an order, during the pendency of the case, to enjoin the defendants from engaging in any act or practice resulting in distinctions based on race or color in the registration or voting processes in the Parish; and specifically requested the court to order the defendants:

"1. To register as a voter any Negro applicant who possesses the following qualifications and none of the following disqualifications:

(a) That he is a citizen not less than twenty-one years of age;

(b) That he has been a resident of Louisiana for one year, of Plaquemines Parish for six months, and of the precinct in which he offers to register as a

voter for three months next preceding any election.

(c) That he possesses the necessary qualifications regarding character and citizenship, as demonstrated by his willingness to take and sign the oath and affidavit prescribed by Louisiana law, and

(d) If the applicant did not meet the foregoing qualifications as of January 18, 1955, that he is also able to read and write as shown by his making written application in his own hand.

"2. To point out to each Negro applicant any answers, errors or omissions on his application form, which, if uncorrected or uncompleted, will disqualify him, and to permit him to correct or complete the form.

"3. To cease requiring any Negro applicant to take or pass the so-called 'constitutional interpretation test' as a prerequisite to qualifying as a voter.

"4. To cease using the application form as an examination or test for Negro applicants, and to use such application only as an information sheet for obtaining data relating to the Negro applicant's qualifications, as such form has been and is being used in registering white applicants.

"5. To place on the current registration rolls of Plaquemines Parish and all official copies thereof, the names of the following Negro citizens of Plaquemines Parish: [Here are listed 41 names.]

"6. To file monthly reports with the Clerk of Court reflecting the name, address, and race of each applicant for registration, the disposition of his application, and, if rejected, the reason therefor."

In the hearing, held on May 1, 2, and 3, 1962, the testimony of witnesses was taken, depositions were received and a large number of exhibits were admitted in evidence. The findings, conclusions and order were incorporated in its opinion of November 2, 1962. *United States v. Fox*, 211 F. Supp. 25. The district court pointed out that in 1962 it was provided both by a statute[3] and by constitutional amendments[4] that the State Board of Registration should prepare and issue an objective written test for citizenship to determine that applicants for registration understand the duties and obligations of citizenship under a Republican form of government, and such test is to be administered to all applicants. We think that these implement and supplement the preexisting provisions and do not operate as an implied repeal of the constitutional[5] and statutory[6] section which permit, if they do not require, the use of the constitutional interpretation test. This test, it seems, has been discontinued in Plaquemines Parish but, of course, could be resumed without any violation of the law of Louisiana.

The district court, reviewing the evidence to some extent, held that "Much greater and more sufficient evidence is necessary, however, in our opinion, to justify

---

[3]Acts 1962, No. 62, La. Rev. Stat. § 18:191.
[4]La. Const. Art. 8, Sec. 18.
[5]La. Const. Art. 8, Sec. 1(d).
[6]La. Rev. Stat. § 18.36.

a finding of a pattern or practice of discrimination and the evidence is insufficient here to permit such a holding." 211 F. Supp. 25, 32.

The court entered a preliminary injunction, during the pendency of the case, enjoining the defendants from discriminating against Negro applicants for registration. The district court declined to order the registration of the 37 named Negroes[7] whose registration had been specifically sought by the United States, which claimed they were qualified and wrongfully refused registration. However, the district court directed that each of these citizens should be notified by the Registrar that they may present themselves as applicants for registration for processing and judging of their tests in conformity with the decree. The defendants were ordered to file monthly reports with the court showing the name, address and race of each applicant for registration, the disposition of his application and if rejected, the reason therefor.

The United States has appealed. Apparently it is not dissatisfied with the operative portions of the court's injunctive order. Its discontent is with the refusal of the court to go further. It specifies two errors, first, in the finding that a pattern or practice of discrimination had not been established, and second, in the refusal of the court to order the registration of Negro applicants who meet the standards which were applied to white applicants prior to the 1962 amendments and who, at the time of those amendments, satisfied the age and residence requirements of Louisiana law.[8] The two specifications of

[7] Four of the 41 had been registered after the suit was instituted.

[8] By a footnote in its brief the United States disclaims any challenge on its part of the failure of the district court to order the registration of those named in its motion for a preliminary injunction.

error are entwined. Only if a pattern or practice is found is the court empowered to declare persons entitled to vote who have been deprived of voting rights on account of race or color.[9] So also, if a pattern or practice of discrimination is found, the applicants who have been subjected to discrimination shall be entitled to an order declaring them entitled to vote.

Although the district court determined that the evidence was not sufficient to justify a finding of a pattern or practice of discrimination, it concluded that the evidence was such as to make necessary a preliminary injunction against engaging in acts or practices of discrimination. The district court recognized the principle which this Court has several times stated,[10] that evidence of a pattern or practice may go back many years, and such evidence was received over the objection of the Registrar. It is apparent from a reading of the record, and we think it is disclosed by the district court's opinion,

---

[9]In any proceeding instituted pursuant to subsection (c) of this section in the event the court finds that any person has been deprived on account of race or color of any right or privilege secured by subsection (a) of this section, the court shall upon request of the Attorney General, and after each party has been given notice and the opportunity to be heard make a finding whether such deprivation was or is pursuant to a pattern or practice. If the court finds such pattern or practice, any person of such race or color resident within the affected area shall, for one year and thereafter until the court subsequently finds that such pattern or practice has ceased, be entitled, upon his application therefor, to an order declaring him qualified to vote, upon proof that at any election or elections (1) he is qualified under State law to vote, and (2) he has since such finding by the court been (a) deprived of or denied under color of law the opportunity to register to vote or otherwise to qualify to vote, or (b) found not qualified to vote by any person acting under color of law. Such order shall be effective as to any election held within the longest period for which such applicant could have been registered or otherwise qualified under State law at which the applicant's qualifications would under State law entitle him to vote. 42 U.S.C.A. § 1971(e).

[10]United States v. Lynd, 5th Cir. 1963, 321 F. 2d 26, cert. den. 375 U.S. 968, 84 S. Ct. 486, 11 L. Ed. 2d 416; United States v. Dogan, 5th Cir. 1963, 314 F. 2d 767; Kennedy v. Lynd, 5th Cir. 1962, 306 F. 2d 222, cert. den. 371 U.S. 952, 83 S. Ct. 507, 9 L. Ed. 2d 500; Alabama v. United States, 5th Cir. 1962, 304 F. 2d 583, aff'd, 371 U. S. 37, 86 S. Ct. 145, 9 L. Ed. 2d 112.

that there has been racial discrimination by the Registrar of Voters, Plaquemines Parish, going back many years and continuing until the time of the commencement of the suit. These acts of discrimination have differed in kind and degree with the passing of the years, the substitution of one officer for another, the changes in office personnel, and the repeal of one statute and the enactment of another. In the opinion of the district court it is noted that "The Registrar, Miss Fox, in her written briefs and response to plaintiff's proposed decree, . . . maintains that her office procedures have been improved and states that 'changes have been made' and that . . . 'there has been tremendous improvement and undoubtedly there will be further improvement to insure that all are treated equally and fairly. . . .'" 211 F. Supp. 25, 33. As we read the foregoing we cannot avoid the impression that the Registrar is conscious of the fact that there was a necessity for improvements, both those made and those to be made, in order to insure equal and fair treatment for those Negroes who desire to register and vote in the Parish.

This Court has recently said that when the District Court makes a finding that no pattern or practice of discrimination existed, it is the obligation of the Court of Appeals to pass upon the correctness of that finding.[11] The case in which this was held was on appeal from a final judgment. Whether such an obligation exists where, as here, the appeal is from the denial of relief by a preliminary injunction, may be doubted. Without detailing the facts as shown by the testimony and documentary proof, we say that it is the opinion of the Court that the

---

[11] United States v. Ramsey, 5th Cir. 1964, on rehearing. . . . . F. 2d . . . . .

evidence in the record is such that, unless countervailing proof is made on final hearing, a finding of pattern and practice of discrimination would be required.

We again comment that this is not an appeal from a final judgment. Rather it is from the refusal to grant the relief sought on an application for a preliminary injunction. Since the district court decided that a pattern or practice of discrimination was not established by the evidence,[12] we think the district court should, in the first instance, determine on final hearing rather than on an application for a preliminary injunction[13] whether the freezing principle[14] should be applied. In reaching this conclusion we do not intend to hold or to indicate an opinion that there may not be cases where, upon a finding of a pattern or practice of discrimination, the court would be under a duty to apply the freezing principle upon an application for a preliminary injunction. We only say that under the facts of this particular situation, as was held in *Ramsey* on rehearing, "the question of further relief should be ruled on by the District Court."

The Registrar and the State assert that error was committed by the admission in evidence of depositions and unauthenticated statistics. They also complain of the admission of proof of discrimination by the predecessors in office of the Registrar. Not having appealed,

---

[12]A conclusion regarded by the Court as incorrect.

[13]United States v. Ramsey, on rehearing, 5th Cir. 1964, ... F. 2d ..... Cf. United States v. Duke, 5th Cir. 1964, ... F. 2d .....

[14]The principle of freezing has been discussed in United States v. Duke, 5th Cir. 1964, ... F. 2d ....., United States v. Ramsey, dissenting opinion, 5th Cir. 1964, ... F. 2d ..... ; United States v. Atkins, 5th Cir. 1963, 323 F. 2d 733; United States v. Dogan, 5th Cir. 1963, 314 F. 2d 767; United States v. Louisiana, E. D. La. 1963, 225 F. Supp. 353.

these questions are not properly brought before us by the appellees. As to the first of these contentions it need only be said that the hearing, at which the challenged evidence was received, was on an application for a preliminary injunction; not on final hearing. As to the second of these complaints, it can be observed that the admissibility of evidence of predecessors' conduct has been approved. *United States v. Atkins*, 5th Cir. 1963, 323 F.2d 733. The appellees have moved to amend the order so as to relieve them of the costs of the proceeding which have been taxed against them by the district court. They urge that "all of the requests of plaintiff were rejected except that defendant was told not to discriminate in the future," and hence the dissatisfied appellant should bear the costs. If this question can be raised in this manner, which we doubt, we would say that the order was proper, in view of the court's finding that an injunction was necessary to prevent discrimination, and in view of our disagreement with the district court's finding on pattern and practice. However, the matter of costs can be reviewed in its entirety on final hearing.

There is not now any reason why this case should not move with dispatch in the district court toward a final judgment at an early date. Additional evidence may, of course, be offered. The *Dogan* case, the third *Lynd* case,[15] the *Atkins* case, the *Ramsey* case, and the *Duke* case, have all been decided since the entry of the order here on appeal, and the principles they announce will serve as a guide in the trial and decision of the cause.

---

[15]United States v. Lynd, 5th Cir. 1963, 321 F. 2d 26.

We find no basis for putting the district court in error for its refusal to apply the freezing principle on the application for a preliminary injunction. Therefore the judgment from which the appeal is taken is

AFFIRMED.